

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ULTRAVISION TECHNOLOGIES, LLC

Plaintiff,

v.

**LAMAR ADVERTISING COMPANY, LAMAR
MEDIA CORPORATION, THE LAMAR
COMPANY, L.L.C., LAMAR TEXAS LIMITED
PARTNERSHIP, LIGHTING TECHNOLOGIES,
INC., AND IRVIN INTERNATIONAL, INC.**

Defendants.

Civil Action No. 2:16-cv-374

JURY TRIAL REQUESTED

**PLAINTIFF ULTRAVISION TECHNOLOGIES, LLC'S SUR-REPLY IN OPPOSITION
TO DEFENDANTS' MOTION FOR LEAVE TO SUPPLEMENT BRIEFING, OR
ALTERNATIVELY TO STRIKE (D.I. 176)**

Recognizing that the Court has already held the *Markman* hearing, Ultravision does not seek to burden the Court with additional filings. Ultravision, however, is compelled to submit this brief sur-reply to correct the record regarding several inaccurate statements made in Defendants' Reply in Support of Their Motion for Leave to Supplement Briefing, or Alternatively to Strike. D.I. 198. Contrary to Defendants' argument, Ultravision did not rely on new evidence in its Reply Claim Construction brief allegedly not identified in the parties' P.R. 4-3 Joint Claim Construction Statement ("JCCS").

Ultravision notified Defendants in the JCCS that it may rely on testimony from the inventors "in response or in rebuttal to any arguments or expert testimony offered by

Defendants.” D.I. 157 at 19.¹ Ultravision further notified Defendants in the JCCS that it may rely on “Plaintiff’s P.R. 3-1 Infringement Contentions and the materials referenced therein.” *Id.* at 18. Those Infringement Contentions identify Ultravision’s products as embodiments of the patents-in-suit and include Ultravision’s P.R. 3-2(b) document production that includes the documents related to the conception and reduction to practice of Ultravision’s prototype products.

Defendants first raised their unsupported argument that the optical element of Figure 8 could not be injection molded in their Responsive Claim Construction Brief and attached expert declaration. The exclusion of injection molded lenses was not apparent from Defendants’ disclosures in the JCCS, and Defendants failed to explain their position in response to Ultravision’s questioning during the claim construction meet and confer process. Thus, Ultravision only responded to the unsupported and inaccurate statements that Defendants’ failed to previously disclose.

Accordingly, Ultravision respectfully requests that the Court deny Defendants’ motion.

¹ See *Phoenix Licensing, LLC., et al., v. AAA Life Ins. Co.*, No. 2:13-cv-1081-JRG-RSP, Dkt. No. 430 (E.D. Tex. Apr. 6, 2015) (denying motion to strike expert declaration where the P.R. 4-3 statement “included a statement that Defendants ‘may’ rely upon the declaration testimony of Jack Grimes in support of their proposed constructions”).

Dated: April 28, 2017.

McKOOl SMITH, P.C.

/s/ Samuel F. Baxter

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**ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

The undersigned certifies that Plaintiff Ultravision Technologies, LLC's Sur-Reply in Opposition to Defendants' Motion for Leave to Supplement Briefing, or Alternatively to Strike was served via e-mail on all counsel in this case on April 28, 2017.

/s/ Samuel F. Baxter
Samuel F. Baxter